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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167398

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner is entitled to MA reimbursement for Olysio/Sovaldi.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: written submittal of Lynn Radmer, R. Ph.
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On June 11, 2015, Community [REDACTED] requested prior authorization (PA) for a 12-week supply of Olysio as a combined treatment with Sovaldi for the petitioner at a cost of \$168,000.

3. The Office of Inspector General denied the request on June 16, 2015.
4. The petitioner is diagnosed with hepatitis C, genotype 1a/1b.
5. The petitioner does not have cirrhosis.
6. The petitioner's Metavir score, which measures scarring of the liver, was listed as "F2".
7. The petitioner does not exhibit any serious manifestations of the hepatitis C virus (HCV) outside of his liver.

DISCUSSION

Drugs that entail substantial cost or utilization problems are subject to prior authorization. Wis. Admin. Code, §DHS 107.10(2)(d). The Department has utilized a preferred drug list since 2004 to inform pharmacies what drugs require authorization. Sovaldi is a non-preferred drug that requires authorization because of its high cost. MA providers were informed of the policy regarding drugs such as Sovaldi in Forward Health Update no. 2014-74, dated November, 2014 and effective December 1, 2014. The Update is available online at <https://www.forwardhealth.wi.gov/kw/pdf/2014-74.pdf>. MA providers were again informed of policy regarding Sovaldi in Update 2015-13, which is attached to the Department case summary dated August 4, 2015 (Exhibit 2) and also found online at <https://www.forwardhealth.wi.gov/kw/pdf/2015-13.pdf>.

Under the policy, Sovaldi will be considered for approval only if the person's disease has advanced to any of the following stages: compensated cirrhosis, serious extra-hepatic manifestations of the virus, or Metavir Score F3 or greater. Members with hepatitis C genotype 1a must be screened for the NS3 Q80K polymorphism. Additionally, providers are required to clearly document why the member is unable to take interferon, Harvoni, ribavirin, and Viekira Pak. There are also a number of circumstances listed which entail automatic denial. The Update finally lists the types of clinical information that the provider may submit to justify the request.

In this case the submission shows that petitioner does not have cirrhosis or hepatic manifestations, and the Metavir Score is listed as F2. The submittal did not show that he had been screened for the NS3 Q80K polymorphism or why he is unable to take Harvoni or Viekira Pak. The petitioner was unable to provide any clinical information to show differently. He testified about the need for treatment of HCV as a life threatening disease and his hope for treatment before his conditions worsen.

Sovaldi undoubtedly would also help those, like petitioner, with less severe complications than required under the policy by preventing the complications from becoming more severe. But this knowledge must be viewed in the context of the high cost of the drug, the need for the medical assistance program to treat all sorts of people with all sorts of medical problems, and the fact that because the state does not have to cover any prescription drugs, it could end the prescription drug portion of the medical assistance program if it cannot control costs. Viewed in this context, the policy is reasonable, even if it does not provide the best possible medical care for all who have hepatitis C. I must determine his eligibility according to whether he meets the criteria set by the department.

This is not a decision I make lightly. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner can always submit another PA if better evidence is available to show that he meets the criteria as it stands or if it changes.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner's PA request for Olysio/Sovaldi because he has not shown by the preponderance of the credible evidence that he meets the agency's guidelines required to receive the treatment.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of November, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 2, 2015.

Division of Health Care Access and Accountability